IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.63 OF 2007

M/s.Hindustan Petroleum Corporation ...Applicant

vs.

Mrs.Mehru Burjor Dastur ...Respondent

Mr.A.A.Kumbhakoni,Associate Advocate General with Mr.M.D.Siodia i/b M/s.Rustomji & Ginwalla for the Applicant.
Mr.Vishal Datta i/b M/s. Markand Gandhi & Co. for the Respondent.

CORAM: A.S.OKA,J.
DATE : MAY 3,2007.

P.C.:

1. The submissions of Shri Kumbhakoni, learned Associate Advocate General were heard on the last date. The challenge in this Revision Application is to the decree of eviction passed by the learned Judge of the Small Causes Court at Mumbai which is confirmed by the Appeal Bench of the said Court.

2. It will be necessary to refer to the facts of the case in brief. The Petitioner M/s.Hindustan Petrolieum Corporation Ltd. is the tenant of the Respondent in respect of the property more particularly described in the suit filed by the Respondent. The property in question is the land admeasuring 600 sq.yards at Tardeo Road, Mumbai. The case of the Respondent is that the Petitioner is no longer protected under the provisions of the Maharashtra Rent Control Act,1999 and therefore, notice of termination of tenancy was issued to the Petitioner on 18th August 2000 by the Advocate for the Respondent and the tenancy was terminated.

3. The trial court accepted the case made out by the Respondent-landlady that in view of the provisions of section 3(1) (b) of the Maharashtra Rent Control Act,1999, the Petitioner does not have protection under the said Act of 1999. The learned Judge of the Small Causes Court accepted the case made out by the Respondent that notice of termination was duly served to the Petitioner. Therefore, the learned Judge proceeded to pass a decree which has been confirmed in Appeal.

4. The learned Counsel for the Petitioner has made two submissions. The first submission is based on the provisions of section 7 of The Caltex (Acquisition of Shares of Caltex Oil Refining (India) Ltd. and of the undertakings in India of Caltex (India) Ltd. Act,1977. His submission is that the original lease created in favour of the predecessor of the Petitioner on 14th July 1955 was for a period of 21 years and there was an option provided to the lessee to renew the lease for a further period of 10 years. His submission is that in view of provisions of section 7 of the said Act of 1977 on expiry of the period of lease, the Petitioner is entitled to continue as a lessee for a further period of 21 years with an option to renew the lease thereafter for a further period of 10 years. He submitted that in view of provisions of the statute, the Respondent had no right to terminate the tenancy. His second submission is that even according to the case of the Respondent, the postal acknowledgement of the notice of

termination of tenancy does not bear the signature of any Officer or Clerk of the Petitioner and therefore, the service of notice under section 106 of the Transfer of Property Act,1882 has not been established. He, therefore, submitted that a decree for possession could not have been passed.

4. I have considered the submissions. Sub section 3 of section 7 of the said Act of 1977 reads thus :

> 7(3) On the expiry of the term of any lease, tenancy of or arrangement referred to in sub section (1) or sub section (2), such lease or tenancy or arrangement shall, if so desired by the Central Government, be renewed or continued, so far as may be, on the same terms and conditions on which the lease or tenancy or arrangement was originally granted or entered into.

Sub section 1 of section 7 of the said Act of 1977 provides that every right or interest in respect of any property in India (including a right under any lease or under any right of tenancy or any right under any arrangement to secure any premises for any purpose), which Caltex (India) held immediately before the appointed day, shall, notwithstanding anything contained in any other law or in any agreement or instrument relating to such right or interest, vest in, and be held by the Central Government on or after the appointed date on the same terms and conditions on which the Caltex (India) would have held it if no negotiations had been taken place for

acquisition by the Central Government of the undertakings of Caltex (India) in India or, as the case may be, if this Act had not been passed. Sub section 3 of section 7 of the said Act of 1977 gives an option to the Central Government on expiry of the term of any lease to renew or continue the lease on same terms and conditions on which the lease was originally granted or entered into.

5. Perusal of the written statement filed by the Petitioner before the trial court shows that no such contention based on sub section 3 of sub section 7 of the said Act of 1977 was raised by the Petitioner. Consequently, no such issue based on the said contention was framed by the Trial Court. The said contention is not raised before the Trial Court. In Memorandum of Appeal preferred by the Petitioner before the Appeal Bench of the Small Causes Court, the said contention has been raised. However, the perusal of the Judgment of the Appeal Bench shows that at the time of hearing of the Appeal, the said contention was not raised by the Petitioner. It is not the case made out in the Memorandum of this Revision Application that the said contention was specifically raised before the Appeal Bench and the same was not considered by the Appeal Bench. Apart from the fact that such contention requires factual foundation in the pleadings, when the said contention is not urged before both the courts below, it is not open for the Petitioner to urge the same for the first time at the time of hearing the Revision Application under section 115 of the Code of Civil Procedure,1908. Only on this

ground, the first contention raised by the learned Counsel for the Petitioner deserves to be rejected.

6. In so far as the second submission is concerned, perusal of the postal acknowledgement of the notice of termination of the tenancy shows that the same bears the rubber stamp of the registered office of the Petitioner. The Petitioner has not led any evidence either by examining the inward clerk in the registered office of the Petitioner or by producing the relevant inward register to show that the notice issued by the Advocate for the Respondent was not received in the office of the Petitioner. The notice was sent by the Advocate for the Respondent in due course by registered post acknowledgement due and the acknowledgement has been received which bears the rubber stamp of the mail section of the registered office of the Petitioner and it also bears the date of receipt of the notice. In view of the said postal acknowledgment produced by the Respondent, it was for the Petitioner to lead evidence either by examining the inward clerk or by producing the relevant inward register. In absence of any such evidence led by the Petitioner, this is a fit case for applying the presumption under section 114 of the Indian Evidence Act,1872. There is a concurrent finding of fact recorded by both the courts below on the aspect of the service of notice of termination under section 106 of the Transfer of Property Act,1882. There is no dispute about the fact that the Petitioner is not protected by a rent control legislation.

7. In view of this position, no interference is called for under section 115 of the said Code of 1908. Hence, the Revision Application is rejected.

8. At this stage, a request is made for continuation of interim relief to enable the Petitioner to challenge this order in the higher court. The said prayer is opposed by the learned Counsel for the Respondent.

9. Considering the facts and circumstances of the case, decree for possession shall not be executed till 31st August 2007 subject to condition that the Petitioner will not create any third party interest in respect of the suit property and will not part with possession thereof in favour of any third party.

JUDGE